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May 16, 2000

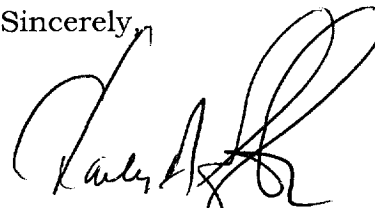
The Honorable Vernon A. Williams
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No.1)
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Ex Parte No. 582 (Sub-No. 1)
Major Rail Consolidations

Dear Sir:

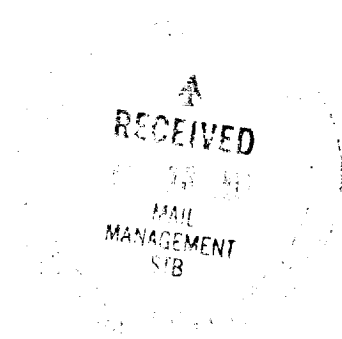
I am enclosing an original and twenty-five (25) copies of the Comments of the Intermountain Power Agency. An additional copy is enclosed for date-stamp and return to our messenger. Please note that a copy of this filing is also enclosed on a 3.5 inch diskette in WordPerfect 5.X format.

Sincerely,



Charles A. Spitulnik

Enclosure



OFFICE OF THE SECRETARY
SURFACE TRANSPORTATION BOARD

MAY 16 2000

Part of
Public Record

198653

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

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Ex Parte No. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

U.S. DEPT. OF
COMMERCE
OFFICE OF THE SECRETARY

**COMMENTS OF
THE INTERMOUNTAIN POWER AGENCY**

MAY 16 2000

Part of
Public Record

The Intermountain Power Agency ("IPA"), by its undersigned counsel, hereby submits its Comments in response to the Order of this Board served on March 31, 2000 in this proceeding. IPA agrees with the host of shippers and industry groups who testified at the hearings in Ex Parte No. 582 that the STB's merger policy guidelines and regulations require modification to permit the STB to impose conditions that will enhance competitive alternatives available to shippers, and that the "one lump" theory as applied in recent merger cases has worked to the disadvantage of shippers like IPA.

IPA operates the Intermountain Generating Station ("IGS"), a large, coal-fired facility located near Delta, Utah. IGS consumes more than 5 million tons annually of coal, mainly from Utah mines, delivered in shipper-owned cars by the Union Pacific Railroad Company (UPRR). All the purchasers of power from IGS (Los Angeles, Glendale, Burbank, Anaheim, Pasadena and Riverside) are municipal utilities.

While some of the coal IPA receives originates on the Utah Railway Company, UPRR is the only railroad that serves the IGS directly. Prior to the merger of UPRR

with the Southern Pacific Transportation Company¹ (which had previously acquired the Denver & Rio Grande Western Railway Company), no carrier had direct access to both the origins that supplied coal to the IGS and to the facility itself. Now, as a result of that merger, UPRR serves directly both the IGS and some of the coal origination locations.

IPA agrees with the parties who, in the Ex Parte No. 582 hearings, suggested that the Board should revise its application of the “one-lump” theory to mergers. This is the theory that has led the Board in the past to refuse to permit additional carriers to gain access to shippers served by only one carrier when that serving carrier merged with one of several connecting railroads. IPA supports the proposition that in circumstances like this, the public interest requires the Board to do what it can to enhance competition at facilities that experience this reduction in meaningful competitive alternatives. The unpleasant reality of IPA’s current relationship with UPRR shows that the Board’s assumptions underlying the “one lump” theory are not correct. UPRR’s conduct demonstrates that an origin or destination carrier with a monopoly, like UPRR at the IGS, will do all that it can to obtain the maximum possible share of the monopoly profits available on a given move.

IPA’s relationship with UPRR is problematic. UPRR has a chokehold over IPA’s coal supply traffic and does not hide its disdain for attempts by IPA to loosen that hold or to ameliorate the exorbitantly high rates IPA pays for transportation of coal to the IGS. Although the Utah Railway is close by and is willing and able to handle some or all of IPA’s shipments all the way to the IGS rather than stopping at Provo,

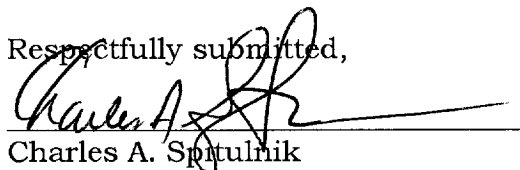
¹ See Finance Docket No. 32760, *Union Pacific Corp. et al – Control and Merger – Southern Pacific Rail Corp.*, Decision No. 44 (Service Date August 12, 1996).

where the interchange with UPRR currently takes place, UPRR remains unwilling to allow any access to its trackage for that purpose.

IPA's story is not unique in the industry, as the testimony in the earlier hearings in Ex Parte No. 582 attests. In an environment where the number of available competitive rail alternatives continues to diminish, and in which the participants in the market continue to gain more and more market power, there is good reason for this Board to adopt rules that will ensure the presence of effective rail competition in as many locations as possible. IPA's experience with UPRR at the IGS demonstrates that when a carrier has the ability to abuse its position in the market, it will do so.

This Board can fulfill its mandate to protect the public interest by imposing conditions in merger cases that will enhance competition. Granting a second carrier access to solely served points that experience a change in the transportation alternatives due to the combination of a serving carrier with one of the competing connections is good policy. IPA supports a change in the Board's current practice and policy and recommends removal of the existing rebuttable presumption that currently prevents shippers situated like IPA and the IGS from obtaining relief from the monopolistic practices of carriers that are the sole direct rail access to a particular facility.

Respectfully submitted,



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Counsel for the Intermountain Power
Agency

Dated: May 16, 2000

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2000, a copy of the Comments of the Intermountain Power Agency was served by first class mail, postage pre-paid upon All Parties of Record.



Charles A. Spitulnik